

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42060

NORTH AMERICA FREIGHT CAR ASSOCIATION — PROTEST AND
PETITION FOR INVESTIGATION — TARIFF PUBLICATIONS OF THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: September 17, 2002

In a decision served October 18, 2001 (October 18 decision), the Board ordered that STB Docket No. 42060 and four other proceedings¹ be held in abeyance while the parties and other interested individuals and organizations negotiated concerning the storage and diversion issues raised relating to the 1986 Agreement prescribed in Investigation of Tank Car Systems, 3 I.C.C.2d 196 (1986).² The parties were directed to give the Board a written report on the progress of the negotiations. In a series of decisions, the Board granted extensions of time, most recently until August 5, 2002, for the parties to attempt to resolve the issues in these proceedings without reopening the 1986 Agreement for negotiations.³ In the interim, three proceedings have been discontinued: STB

¹ STB Docket No. 42061, Railway Progress Institute Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328; STB Docket No. 42062, The Chlorine Institute, Inc. — Protest and Petition for Investigation — Tariff Publications of Union Pacific Railroad Company; STB Docket No. 42063, Railway Progress Institute Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328; and STB Docket No. 42064, E. I. DuPont De Nemours and Company — Protest and Petition for Investigation.

² In addition, the North America Freight Car Association (NAFCA) filed a complaint against The Burlington Northern and Santa Fe Railway Company (BNSF) in STB Docket No. 42060 (Sub-No. 1). Complainant indicated that “at an appropriate time” it intended to file a petition to consolidate that proceeding with STB Docket No. 42060. BNSF has filed a motion to dismiss the complaint, and complainant filed a reply on November 5, 2001. The proceedings have not been consolidated.

³ The Board granted extensions to permit these discussions in decisions served November 20, 2001 (November 20 decision), January 8, 2002, February 22, 2002, April 12, 2002, May 29, 2002 (May 29 decision), and July 5, 2002.

Docket No. 42061, STB Docket No. 42062, and STB No. 42063,⁴ leaving only STB Docket Nos. 42060 and 42064 pending.

The Board, in its November 20 and May 29 decisions, also extended the time for filing of petitions for reconsideration or clarification of the October 18 decision until 20 days after the end of all negotiations. The May 29 decision noted that, of the two remaining active proceedings, negotiations appeared fruitless in STB Docket No. 42060, but that the parties still wished to negotiate in STB Docket No. 42064. Accordingly, it stated that, when negotiations in that proceeding ended, a further decision would be issued establishing when the 20-day period for filing petitions for reconsideration would begin.

In a letter filed August 5, 2002, in STB Docket No. 42064, E.I du Pont de Nemours and Company (DuPont) indicates that the Union Pacific Railroad Company (UP) and DuPont have completed negotiations and that when the agreement they have reached is reduced to writing and executed, it will withdraw its protest and petition in that proceeding. The North America Freight Car Association (NAFCA), in a letter filed August 14, 2002, states that NAFCA and UP have reached an agreement regarding NAFCA's withdrawal (without prejudice) of its notice of intent to participate in STB Docket No. 42064 upon settlement between DuPont and UP.

In a letter filed August 20, 2002, in STB Docket No. 42060, NAFCA requests that the Board issue an order setting a date for filing petitions for reconsideration of the Board's October 18 decision. NAFCA's request will be granted because the May 29 decision stated that a date for filing those petitions would be set when negotiations ended in STB Docket No. 42064. Accordingly, petitions for reconsideration or clarification of the October 18 decision will be due by October 9, 2002. Replies will be due by October 29, 2002.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Petitions for reconsideration or clarification of the October 18 decision in this proceeding are due by October 9, 2002. Replies are due by October 29, 2002.

⁴ Those proceedings were discontinued in decisions served March 20, 2002, April 12, 2002, and May 15, 2002, respectively.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary